195° **K** **File No.** O. Motor 50

Legal Dept.

A. **BRANCH**

Subject:— opinions under the Indian Motor Vehicles Act. 1939

P 53 ©

File No. O. Motor 150

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C O N T E N T S.

Legal Department File No. C. Motor / 50.

Sr. No.	R.I./O.No.	Subject	page
		Opinions under the Motor Vehicles Act, 1939.	
1).	O.No.144/5-1-50	Re. Compensation payable to the owners of the lands whose lands have been requisitioned for the purpose of the State Transport (pl. see R.L.A.'s No. 13354 dt. 23-11-49)	1
2).	O.No.1113/24-1-50	Sec. 24(1) Re.Registration of Motor Vehicles owned by frims (pl. see R.L.A.'s Nos. 8140 dt. 23-5-51 and No. 2265 dt. 12-2-52).	3 -
3).	O.No.2624/23-2-50	Question whether it is competent for Govt. by notification under sec. 44A of the Act to delegate to the P.T.O. the powrs to grant counter-signatures for the operation of transport Vehicles in lieu of the powers of the R.T.A.	5 -
4).	O.No.3208/8-3-50	Sec. 42(3). Re. A mobile crane weighing 61,824 lbs. which isused for lifting and unloading heavy machines. Question whether such type of vehicles should be exempted from the provisions of sec. 42(1), for obtaining the required permit.	9
5).	O.No.2703/24-2-50	Sec. 94. Whether Vehicles of the B'bay State Road Transport corporation can be exempted from insurance (pl. see R.L.A.'s No. 4342 dt. 29-3-50)	1
	O.No.2971/2-3-50	Whether Appellate authorily appointed by the Bombay Motor Vehicles Rules can be empowered to enhance punishments.	1
7).	O.No.3852/18-3-50	Sec. 44. Whether Parliamentary Secretaries are non-officials for the purpose of Transport Authorities under	
8).	O.No.4342/29-3-50	Sec. 94. Whether Vehicles of B'bay State Road Transport Corperation can be exempted from insurance	
9).	O.No. 11166/6-10-49	Sec. 15(1)(C) Whether it is necessary to amend the sec. 15(1)(c) of the Act as suggested by I.G.P. to enable the R.T.O. to take effective action departmentally in all cases of Dangerous speeding.	

	R.I./O.No.	Subject	pag...
10)	O.No.5120/14-4-50	1)Whether it is expedient to amend sec 15(1)(c) to admit of departmental action in all cases of high speeding and if so, 2)whether the amendments suggested by P.T.O. are in order.	27 - 2
11).	O.No.6626/1-5-50	Sec 2(19) First Schedule Form E Question regarding widening the definition of "owner" in sec. 2(19) so as to include any executive head in whose possession the vehicle is lying.	29
12).	O.No.6831/19-5-50	Sec. 60(1)(c). Amendment of M.V. Rules so as to call forinformation as regards registrations nos registration marks in respect of stage carriage owners	31- 3
13).	O.No.7131/25-5-50	Whether fresh conditions can be imposed after the issue of a permit under the Act.	33-
14).	O.No.7697/7-6-50	Sec. 34(3) Whether the registering authority canorder the production of a Vehicles under -	35
15).	O.No.8015/14-6-50	B'bay M.V.Rules, 1948. Rules 25,26(1) and 76(1) Whether appeal fees can be refunded when appeal is not admitted etc.	37-
16).	O.No.9883/13-7-50	Sec. 8(1) Question whether the view of the P.T.O that since a licensing authority canissue authorisation to drive public service Vehicles for a period for which motor driving licence is valid, it would be competent forhim to grant an authorisation for lesser period and hence temporary authorisation to drive public service Vehicles can be granted even under the law as it stands at present, is correct. (pl. see R.L.A's note 13200 dt. 21-11-49).	39-5
17).	O.No.12362/29-8-50	Sec. 44(3) B'bay State Road Transport Act, 1950 Re. olicy of issuing permits under theM.V. Act, to private operators pending the operations of the routes by the B'bay State Road Transport Corporation.	
18).	O.No.12242/26-5-50	Whether the transfer of the area (viz. Amreli, Ghoga, Dwarka and Okha etc. which are attached to the Ah'bad region of the B'bay State) of the Bombay State to the Saurashtra State for the purpose of the administration of the M.V. Act andRules is legally feasible.	

No.	R.I./O.No.	Subject	pages
19).	O.No.12538/1-9-50	~~Whether the transfer of the~~ ~~area (xix.~~ Sec. 72(3)(b) Whether goods Vehicles can be permitted to carry overload.	47 -48
20).	O.No.12539/1-9-50 .	Whether under Sec. 34(3) the registering authority-can direct the owner to produce a Vehicle before a M.V.Inspector (who is the inspecting authority) at such place as may be directed by the registerring authority.	49-52.
21).	O.No.12549/1-9-50	Whether under the M.V. Act, in the B.M.V. Rule, 1940, an appeal would lie to the Appellate Committee of the Provincial T. authority/ against the order of the R.T.A . Poona, directing that meters, should be fitted to taxis plying in the region.	53-54.
22).	~~B.No.787-Genrl./19-9-50~~	~~M.V.Act, 1939. Ch. II~~	
	O.No.12816/7-9-50.	Sec. 44(2) Whether members of the Board of the Bombay State Road Transport Corporation can be members of the State Transport Authority or the R.T.A .	55 - 56
23).	O.No.707-Confl/ 19-9-50	B.M.V.Act, 1939, Ch.II Whether a condition about literacy can be imposed in respect of applicants for driving licences.	57 -58.
24).	O.No.18474/24-7-50	Question as to have losses to Govt. by Motor accidents on P.W.D. Roads can be minimised.	59-60.
25).	B.No.11730/18-8-50	Sec. 43(1)(ii) Question regarding extending the concession of charging reservation charges to private operators as in the case of State Transport Service.	61-62.
26).	O.No.13029/12-9-50	Sec. 9(2) and 9(4). Re. Permanent and temporary residence of licence holder.	63 -64
27).	O.No.13468/22-9-50	Bombay M.V.Rules, 1940, Rule 76. Re. Constitution of Appellate Committees	65-68.
28).	O.No.13806/30-9-50	B'bay Sec. 42(1), Whether taxi owners must be taxi drivers.	69- 74.
29).	O.No.14224/10-10-50	B.M.V. Rules. Whether appeals made under - are governed by the limitation Act, 1908.	75- 76
30).	O.No.15385/3-11-50	Question whether the Govt. of B'bay is bound by themonopoly granted by the Jambughoda Darbar to the Reva Transport Service.	77 - 80

No.	R.I./O.No.	Subject	pages
31.	O.NO.731-Conf1/29-9-50	B.M.V.Rules, 1940 Rule 48-A Re. Order passed by the Secy Regional Transport Authority in exercise of the delegated powers under rule 48A. Question whether the R.T.A can interfere with such an order.	81 - 8
32).	O.No.14024/5-10-50	Question whether the Western India Automobile Association can be legally empowered as the competent authority to endorse the International Driving Permits of persons arriving in British India so as to make them valid in British India, ~~xxx~~ for the period of their validity.	83
33).	O.No.15182/1--11-50	Whether rule 212 of the M.V. Rules, 1940 is ultra vires.	87 -8
34).	O.No.15235/1-11-50	Whether transport monopoly fee recovered by D.S.Police Aundh should be refunded.	89
35).	O.No.17570/11-12-50	Sec. 44 A Re. Permits to be granted to public carrier. Powers of R.T.O. and S.T.O. as R.T.A. and S.T.A. in respect of -	91
36).	O.No.17621/12-12-50	1) whether state Legislature is competent to amend the B.M.V. Act, 1939, in its application to the State of Bombay. 2) if so, whether previous concurrence of the G. of I. will be necessary.	93

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The reference at "A in H.D. letter No. 9890/5-I dated the 2nd December 1949 to the Provincial Motor Transport Controller obviously conflicts with the protion at "B" in that same letter. The gist of the R.L.A.'s opinion was that once some amount was paid to the owners by way of compensation, Government and now the Corporation would not be heard by any tribunal to say that something less should be paid; for the tribunal will have regard to the natural course of events and hold that no body would pay by way of ad interim compensation something more than what was reasonable. In that sense the payment would act as an estoppel. From the concluding portion of the H.D. letter it is seen that the Provincial Motor Transport Controller was asked to take an undertaking in writing from the owners incorporating the terms mentioned in the letter. It is not necessary to incorporate all the terms. The only points that need be specifically mentioned are that the amount is paid provisionally without prejudice to the claims of the owners and that ~~without prejudice to the claims of the owners and~~ that the amount as paid will be deducted from the compensation awarded by the Compensation Officer. If such an undertaking is taken it does not appear it will lead to complications.

P.M.Lad

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U.R. to H.D. No. 144, dated the 5th January 1950.

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Motor Vehicles Act, 1939 Section 24(1) Registration of Motor vehicles owner by firms.

Syb-section (1) of section 24 of the Motor Vehicles Act, 1939, p ovides that an application by or on behalf of the owner of r motor vehicles for registration shall be in Form E in the First Schedule to the Act and shall contain the information required by that form. Under ~~contain~~ the sub-section (2) a certificate of registration is issued to the owner of a motor vehicle. The first ~~ent~~ entry in Form E in the First Schedule is "Full name, name of father, and address of person to be registered as registered owner, " Although under section 24(1) an application for registration can be made either by the proposed registered owner or by somebody on his behalf, still inview of this entry in Form E it appears that in the case of a firm or company all the partners will have to be registered as registered owners and therefore information in respect of all the partners will have to be furnished. There is no special provision in the Motor Vehicles Act, 1939, as regards the registeration of motor vehicles owned by firms. The form of application for registration , on the contrary suggests that on an individual can be registered as a registered owner. The procedure followed by the Provincial Transport Officer upto now appears to be unobjectionable.

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23-1

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U.R. to H.D. No. 1113 Dated the 24th January 195

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R.I.No. 2130/dt. 27-12-49.

The Secretary Provincial Transport Authority in his letter dated 29.9.49 has stated that under a Resolution passed by the P.T.A. the P.T.O. has been authorised to grant counter-signatures for operation of transport vehicles in more than one region leaving the Regional Transport Authorities to issue counter-signatures only for a particular purpose. He has further stated that the object of the P.T.A.'s Resolution can be achieved if Government by notification under section 44-A of the Motor Vehicles Act, 1939 delegates powers to the P.T.O. to grant countersignatures.

The question for R.L.A.'s consideration is whether, it is competent for Government by notification under section 44A of the Motor Vehicles Act, 1939 to delegate to the P.T.O. the powers to grant counter-signatures for the operation of transport vehicles, in lieu of th powers of the Regional Transport Authority.

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U.O.R. to H.D.No. 2624 , dated the 23rd February 1950.

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Motor Vehicles Act, 1939. Sec. 42(3).

Chapter IV of the Motor Vehicles Act, 1939 provides for the control of transport vehicles Unless the mobile crane in question is a transport vehicle as defined in section 2(33) - and it does not appear to fall within that definition - the question of controlling it under the provisions of that chapter does not arise. If it be not a transport vehicle, the question of its exemption under section 42(3) does not survive. The Provincial Transport Officer should first consider whether or not it is a transport vehicle within the definition of section 2(33).

P.M. Mad 7/3

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U.R. to H.D. No. 3208
Dated the 8th March 1950.

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No. Vehicles Act, 1939, section 94 : Whether Vehicles of the Bombay State Road Transport Corporation can be exempted from insurance.

Sub-section (1) of section 94 of the Motor Vehicles Act, 1939, provides inter alia that no person shall use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person a policy of insurance complying with the requirements of Chapter VIII of the Act. Sub-section (2) provides that the section shall notapply to any vehicle owned by or on behalf of the Central Government or a Provincial Government or a local authority notified in this behalfby the Provincial Government. The provisions of sub-section (1) are mandatory and the only exceptions to it are those specified in sub-section (2). There is no provision in Chapter VIII or in any other Chapter of the Act empowering the State Government to exempt any motor vehicles or any class of motor vehicles from the operation of sub-section (1) of section 94. The Deputy Secretary, Home Department in his note at page 5 ante has suggested whether by stretching the words "local authority" it wouldnot be feasible to consider the State Road Transport Corporation to be a local authority. The expression "Local authority" as defined in section 3(28) of the General Clauses Act, 1897, means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government, with the control or management of a municipality municipal or local fund. It would appear from this definition that the Bombay State Road Transport Corporation cannot be deemed to be a local authority. Consequently so long as the Motor Vehicles Act, 1939,

stands ....

circumstances as at present, it would not be legally feasible to exempt the vehicles of the corporation from the necessity of insurance against third party risk.

B.M.Lad
24-2
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U.R. to H.D. No. 27-3 , dated the 24th February 1950.
(pl. also see U.R. to H.D. No. 4342, dated 29-3-50).

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The Provincial Transport Officer in his letter at pages 2 1-3 ante has suggested that the Appellate Authority under the Bombay Motor Vehicles Rules, 1940, may be empowered to enhance punishment inflicted by the Regional Transport Authority. The question raised for the considera tion of the R.L.A. is whether the necessary provision can be made by amending the Bombay Motor Vehicles Rules, 1940,

2. The Provincial Transpxx Transport Officer in his lette has referred to appeals under section 16(2) of xxxxxx and 64 of the Motor Vehicles Act, 1939. Under sub-section (2) of section 16 read with rule 7(b) of the Bombay Motor Vehi cles Rules 1940, an appeal against an order of a Regional Transport Authority made under sub-section (1) of section lies to an Appellate Committee of the Provincial Transport Authority. Rules for the purpose of carrying into effect p ovisions of Chapter II of the Motor Vehicles Act, 1939 in which Chapter section 16 occurs can be made under sect 21 of the Act. Under clause (b) of sub-section (2) of section such rules can however provide only for the condu and hearing of appeals, the fees to be paid in respect such appeals and the refund of such fees. A rule empow ing the Appellate Committee to enhance the punishment inflicted by the Regional Transport Authority cannot the fore be made under that section. In order to give effe to the proposal made by the Provincial Transpport Office will be necessary to amend the substantive law, viz. Motor Vehicles Act, 1939.

3. The same considerations apply in respect of the of the appellate authority to which appeals under sec 64 can be preferred . Section 68(2)(b) of the Act pr for the same matters as are specified in clause (b) o section (2) of section 21. As regards appeals under se 64, rule 76 of the Bombay Motor Vehicles Rules, 1940, fies the appellate authority, the period within which appeals shall be filed, etc. The rule does prescribe

the powers of the appellate authority. The intention underlying this appears to be that the appellate authority should either confirm or set aside the decision of the Regional Transport Authority. The circumstances specified in clauses (a) to (g) of that section appear to make this clear. The question of onhancement of pubishmentunder section 64 does not appear to be quite appropriate.

4. Incidentally it may observed that rule 76 of the Motor ~~Vehicles~~ Vehicles Rules prescribes the Appellate Authority. etc. only inrespect of clauses (a) to (f) of section 64. No provision appears to have been made in respect of appeals under clause (g) of that section.

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U.R. TO H.D. No. 2971 dated the 2nd March 1950.

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tor Vehicles Act, 39, Section 44. er Parliamen- Secretaries non-officials the purpose of sport Autho es under -

The question raised by the Secretary, Home Department , for the consideration of the R.L.A. is whether there is any objection to treating Parliamentary Secretaries as non-officials for the purposes of the Motor Transport Authorities as well as for the State tra sport Board.

2. Motor Transport Authorities are constituted under section 44 of the Motor Vehicles Act, 1939. Under sub-section (2) of that section a Provincial Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the State Government may think fit to appoint. So far as the Board of the Bombay State Road Transport Corporationis concerned, its constitution is provided by clause 2 of G.N.H.D. No. 1780/5, dated 16-11-1949. The Board shall consist of nine members representing the interests or possessing the qualifications specified in that clause. No reference to officials or non-officials finds place in that clause, The questionwhether Parliamentary Secretaries can be treated as non-officials really arises only in the case of the Authorities constituted under section 44 of the Motor Vehicles Act, 1939. The answer to the question would depend upon whether Parliamentary Secretaries can be said to be the servants of the State. The whole question was considered by the R.L.A. in his opinion No. 350-Confl, dated 1-7-,1948, and it was held that the offi office held by a Parliamentary Secretary was an office of profit under the State, it was an office of a political nature and was not one in a service of a political nature and was not one in a service under the State. A Parliamentary Secretary cannot, therefore, be considered as a part of the

Executive of the State. There would, therefore, be no legal objection to treating them as non-officials for the purpose wither of the Provincial Transport Authority. or the Regional Transport Authorities. Compare the last paragraph of section 134 of the Govt. of India Act of 1919

P.M.Lad

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U.R. to H.D. No. 3853 , dated the 18th March 1950.

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Motor Vehicles Act 1939, section 94 whether vehicles of the Bombay State Road Transport Corporation can be exempted from insurance.

Sub-section (1) of section 94 of the Motor Vehicles Act; 1939, provides that that section shall not apply to any vehicle owned by or on behalf of the Union Government or the State Government etc. The Expression "on behalf of " means "on the part of" or "on account of " (vide the Concise Oxford Dictionary). The opening words of sub-section (1) of section 94 therefore refer to vehicles , owned by the agents or servants of Government. The Bombay State Road Transport Corporation constituted by G.N.H.D. No. 1780/5, dated 16-11-1949 under the provisions of the Road Transport Corporation Act, 1948, (XXXII of 1948) is by virtue of section 4. of that Act a body corporate having perpetual succession and a common seal and has the very wide powers given by Chapter II of the said Notification. It is on independent body and not a mere agent of the Government. That the shares are held by the Union or the State Government does not affect the character of the Corporation. It does not therefore appear that there is any force in the argument now advanced by the Provincial Motor Transport Controller. The view expressed by the Secretary. Home Department in his note at page 26 ante is correct. and there is no need to modify the opinion at pp. 7-9 ante.

P.M.Lad
28-3

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U.R. to H.D. No. 4342 dated the 29th March 1950

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The expression "previous conduct" in sec. 15 (1)(c) of the Motor Vehicles Act, 1939, means conduct prior to or next preceding conduct which has called for action. Consequently, a driver's license cannot be cancelled under that provision for rash driving unless it could be proved that he had committed such rash driving previously. The view taken by the Inspector General of Police is correct.

P.M.Lad
5-10

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U.M. to H.D.No. 11166 , dated the 6th October 1949.

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Legal Department.

Proposed amendment to section 15(1)(a) at page 5 -

The object of substituting the word "criminal" by the word "offender "is, as stated by the Provincial Transport Officer at page 5, to enable a licensing authority to disqualify a driver from holding a licence even if he is charge-sheeted but not convicted. convicted. According to principles of criminal law a person is not guilty of any offence unless he has been convicted. It would be dangerous to authorize a licensing authority to take action against a person if in the eye of law he is innocent. The amendment is opposed to the principles of criminal law and cannot be justified.

Proposed amendment to section 15(1)(c) at page 5 -

The Provincial Transport officer holds the view that one instance or conviction for driving a vehicle dangerously (presumably under section 116) is sufficient for taking departmental action. Probably what the Provincial Transport officer aims at is that a licensing authority should have the power to disqualify a driver from holding or obtaining a licence for a specified period even if he is convicted more once. The object in view can be achieved by amending the Act as proposed by him. The State Government is competent, by virtue of entry 35 in the concurrent with list in the Seventh Schedule to the Constitution of India to amend the Act. But in accordance with the executive instruction, it will be necessary to obtain the administrative approval of the Government of India, and the Government of India is not likely to accord its approval to the amendment of the Motor Vehicles Act in its application to the Bombay State only as the Act applies to India as a whole and the amendment proposed cannot be justified on the ground that it is required for the State of Bombay only.

J.R.Dharandar.

U.R. to H.D. No. 5120 dated the 14th April 1950.

Office of the R.L.A.

Motor Vehicles Act, 1939. Section 2(19) First Schedule Form E.

To ~~xhhx~~ achieve the object in view it would not only be necessary to amend the definition of the ~~X~~ term "owner" but even Form E in the First Schedule will have to be suitably amended. A separate provision will also have to be made in the Act providing for offences by corporations, company etc. on the lines of section 12 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, and section 9 of the Essential Supplies (T.P.) Act, 1946.

P.M.Lad
13-5

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U.R. to H.D. N 6626 , dated the 15th May 1950.

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Motor Vehicles Act, 1939. Section 60(1)(c).

Clause (c) of sub-section (1) of section 60 of the Motor Vehicles Act, 1939, empowers the transport authority to cancel or suspend a permit if the holder of the permit ceases to possess the vehicle or vehicles covered by the permit. There is no provision in the Act requiring the holder of a stage carriage permit to be the registered owner of the vehicle or vehicles in respect of which the grant permit is granted (see section 46 and the sections following). It is not quite clear what advantage will be gained by calling for information as regards registeration marks. However, if the Depa-rtment considers it helpful, the object can be achieved by sutably amending the Bombay Motor Vehicles Rules., 1940.

P.M.Lad
16-7
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U.R. to H.D. No. 6831 , dated the 19th May 1950

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Motor Vehicles Act, 1939, Alteration of Permits granted.

As neither the Motor Vehicles Act, 1939 nor the licenses granted under it reserve the power to alter the conditions of permits granted under the Act, neither the Regional Transport Authority nor the Provincial Transport Authority, can impose fresh conditions or alter the conditions of the said permits during the period of their validity. Now, conditions can be imposed only at the time of renewal or at the time when permits are countersigned for the purpose of validating their use outside the region for which they are granted (see section 63). If it is intended to reserve power to alter the conditions or impose new conditions during the currency of the permits issued under the Motor Vehicles Act, 1939, it will have to be amended (see Babaji Shivram vs. Emperor, I.L.R. 1942, Bom. 614).

P.M.Lad
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U.R. to H.D. No. 7131 dated the 25th May 1950.

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Motor Vehicles Act, 1939, Section 34(3). Whether the Registering authority can order the Production of a vehicle under -

The presumption made by the Provincial Transport Officer at "A" in his letter at p. 1 ante is not correc Comparing the provisions of section 28 and section 34(3 of the Motor Vehicles Act, 1939, it would be apparent that under the former the registering authority can call up a vehicle for inspection while under the letter he can only order its examination by an authorit appointed by Government, which power would not apparent ly include power to orde r production for inspection by the registering authority.

P.M.Lad
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U.R. to H.D. No. 7697 , dated the 7th June 1950.

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Bombay Motor Vehicles Rules. 1940; rules 25 25(1) and 76(1) whether appeal fees can be refunded by when appeal is not admitted etc.

Subrule (1) of rule 26 of the Bombay Motor Vehicles Rules, 1940, provides that an appeal under rule 25 shall be preferred in duplicate and shall be accompanied by a fee of five rupees in cash and a certified copy of the order appealed against. It provides further that the Provincial Transport Officer or the Regional Transport Officer concerned may, if the appeal succeeds, refund the fee in whole or in part, as he thinks fit. There is a similar provision in rule 76 in respect of appeals against the order of the Regional Transport Authority An appeal preferred under sub-rule (1) of that rule is required to be accomplished by a fee of rupee fifteen. That rule further provides that the committee of Appeal may, if the Appeal succeeds, refund the fee in whole or in part as it thinks fit. Thus under both these rules refund of the ~~fees~~ fees is permissible only if the appeal succeeds. In the cases referred to in para . 2 of the Provincial Transport Authority's letter i.e. where the appeals do not conform to the requirements of the rules, or are preferred after the prescribed period of limitation, or are not accepted or admitted or are withdrawn refund of the fees would not be permissible. In short, refund of the fees cannot be allowed except in the case of the appellant succeeding.

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U.R. to H.D. No. 8015 , dated ~~xx~~ the 14th June 1950

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)tor Vehicles
)t, 1939, sec.
1) - Addi-
tional
)cretary's opinion
). 13200
/- 21-11-49.

Authorization to drive a public service vehicle being conterminus with the driving license in form D and the latter being effective without renewal for a period of twelv months, the former cannot be for a period shorter than 12 months. The view taken by the Provincial Transport Officer is not correct.

P.M.Lad
12-7

Remembrancer of Legal Affairs.

U.R. to H.D. No. 9883 dated, 13th July 1950.

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Motor Vehicles Act, 1939 Section 44(3).

Bombay State Road Transport Act, 1950

The ~~xxxxxxxxx~~ courses (1) and(2) would not be legally feasible as the direction proposed would not be of the kind contemplated by section 44(3) of the Motor Vehicles Act, 1939. The course (3) also would not be feasible as no permit leaving the date indefinite or providing for post dating it can be lawfully granted under the A gt.

2. As observed by Home Department even if regular permits are issued to operators, the State Transport Authority has under the Bombay State Road Transport Act, 1950, power to cancel or suspend them and if those permits relate to controlled routes, they would be invalid unless they are countersigned by the officer appointed by the Corporation; but in such event the permit holders will have to be paid proper compensation.

3. Considering the course which litigation in this matter has taken in the past and the issues now pending before the High Court in the proceedings by the North Deccan Transport Ltd. of Nasik, thesafe course would be to use the p ovisions of the Bombay State Road Transport Act, 1950, for any extension of State Transport and not to fallback on the provisions of the Motor Vehicles Act, 1939, with the ultimate and in view of minimising the compensation.

P.M.Lad
28-8

Remembrancer of Legal Affairs.

U.R. to H.D. No. 12362 , dated the 29th August 1950.

S.C. 12/6 4 copies/

L.D.R.I.No. 15055
12.8.50.

Submitted.

Please see the copy of the letter of the R.T.O. Saurashtra at p. 3 ante.

The R.T.O. states that since the administration of the Motor Vehicles Act in Amreli, Ghoga, Dwarka and Okha etc. which are attached to the Ahmedabad region of the Bombay State, but which are situated in the heart of Saurashtra is found very difficult, these territories, for the purpose of the convenient administration of the Motor Vehicles Act and also for the convenience of the Motoring public may be administered by the Government of Saurashtra for the time being.

The question for R.L.A.'s consideration is whether the transfer of the said area of the Bombay State to the Saurashtra State for the purpose of the administration of the M.V.Act and Rules is legally feasible.

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The view taken by the Secretary H.D. is correct. Government cannot surrender jurisdiction over the area even in respect of the administration of theMotor Vehicles Act therein.

P.M.Lad

25-8

Remembrancer of Legal Affairs.

U.R. to H.D. No. 12242 dated the 26th August 1950.

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Motor Vehicles Act, 1939, Section 72(3)(b) Whether goods Vehicles can be permitted to carry overload.

The question raised for the consideration of the R.L.A. is whether in view of section 72(3)(b) of the Motor Vehicles Act, 1939, it will be competent for Government to permit goods vehicles to exceed their registered laden weight by an executive order or by insuring a suitable rule in the Bombay Motor Vehicles Rules, 1940.

2. Clause (b) of sub-section (3) of section 72 of the Motor Vehicles Act, 1939, provides that no person shall drive or cause or allow to be driven in any public place any motor vehilce or trailer the laden weight of which exceeds the registered laden weight specified in the certificate of registration. This provision is ofa mandatory nature and no exception and are provided in the Act to the general prohibition prescribed therein. It would not therefore be feasible to permit goods vehicles to carry load in excess of the registered laden weight by issuing an executive order or by amending the Bombay Motor Vehicles Rules, 1940.

P.M.Lad
31-8

Remembrancer of Legal Affairs.

U.R. to H.D. NO. 12538 , dated the 1st ~~August~~ Sept. 1950

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Submitted.

Please see R.L.A.'s opinion No. 7697 dt. 7.6.1950 at p. 3 ante in which the view was expressed that under sebsection (3) of section 34 of the Motor Vehicles A ct, 1939, which empowers the registering authority to order the examination of a motor Vehicle within its jurisdiction, it was not competent for the registering authority to orde production of a vehicle for inspection. The Stat Transport Officer has raised the question whether under section 34(3) the registering autho rity can direct the owner to produce a vehicle before a Motor Vehicles Inspector (who is the inspecting authority appointed by Government for the purpose) at such place as may be directed by the registering authority.

2. The answer to the point appears to be in the negative. The power given to the registering aut authority under sub-section (3) of section 34 of the Motor Vehicles Act, 1939, is restricted to ordering the examination of a motor vvehicle within its jurisdiction. The actual examination of the Vehicle will be undertaken by the Inspecting authority (the Motor Vehicles Inspector The power to call for a vehicle forinspection is ancillary to the power of examining it. Therefore a vehicle can be called for at a particular place by an order of the Motor Vehicles Inspector and not of the registering authority. It is not also under sthod why the registering authority should be anxi ous to exercise this power; for surely after exami- ning a vehicle the Motor Vehicles Inspector will forward his report to the registering authority enable it to act further in the matter.

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The answer to the question raised by the State Transport Officer is in the affirmative.

2. The power given by sub-section (3) of section 34 of the Motor Vehicles Act, 1939, is the power to order the examination of a motor vehicle by such authority as the State Government may by order appoint. In exercising that power it will be permissible for the Registering authority to indicate at what particular place the xekit Vehicle should be produced before the authority appointed for examination. Indicating the place would be merely ancillary to the exercise of the power to order an examination.

P.M.Lad
31-8
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U.R. to H.D.No. 12539 dated the 1st Sept. 1950.

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It may be that the P.T.A. decided that taxi meters should be fitted to all motor vans plying in cities and elsewhere. This decision of the P.T.A. cannot be said to have statutory force in the sense of having been made in exercise of statutory powers. Under clause (d) ofsection 51 of the Motor Vehicles Act, 1939, the R.T.A. is empowered to require that any motor cab shall be fitted with a taxi meter. There does not appear any provision in the Act whereunder the P.T.A. could exercise this statutory power of the R.T.A. as for example, in cases under sections 44(3)(b), as 45 proviso etc. The order of the R.T.A. , Poona dated 15-4-1950 requiring taxies plying in the South Deccan Region to fix meters must, therefore, be treated as a statutory order under clause (d) of section 51, whatever may be its genesis or inspiration. An order of this kind results in varying the condition of a permit granted in respect of motor cabs and thus becomes appealable under section 64(b).. The authority prescribed to hear appeals against the orders of the R.T.A. in respect of matters under clause (b) of section 64 is the Appellate Committee of the P.T.A. It follows, therefore, that an appeal can lie to the Appellate Committee of the P.T.A. against the order of the R.T.A.Poona, dated 15-4-1950. Since the appellant in his petition of appeal is praying for the appeal being remanded to the P.T.A. there would be no legal objection to the State Government making an order accordingly.

P.M.Lad
31-8

Remembrancer of Legal Affairs.

U.R. to H.D. No. 12549 dated the 1st August 1950.

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Motor Vehicles Act, 1939 Section 44(2).

Whether members of the Board of the Bombay State Road Transport Corporation can be members of the State Transport Authority or the R.T.A.

The question for the consideration of the R.L.A., is whether in view of the provisions of sub-section (2) of section 44 of the Motor Vehicles Act, 1939, persons who are members of the Board of the Bombay State Road Transport Corporation, are disqualified to be or to continue as members of the State Transport Authority or the Regional Transport Authority.

Sub-section (2) of section 44 of the Motor Vehicles Act, 1939 provides that a person is disqualified to be appointed on these Authorities if he has any financial interest whether as proprietor, employee, or otherwise in any Transport undertaking

The Bombay State Road Transport Corporation though a statutory body is none the less a transport undertaking for the purposes of the Motor Vehicles Act. The Corporation consists of a Board; and it is the Board who has all executive and financial control of the Corporation's affairs. It follows, therefore, that a member of the Board has a financial interest in the Corporation as a proprietor. The object of the enactment is to prevent a conflict between interest and duty which would be inevitable if a proprietor of an undertaking were t be a member of the State Transport Authority or the Road Transport Authority which has to perform statutory a nd even quasi- judicial duties as between several undertakings. Having regard to that object and to the wording of section 44(2) of the Motor Vehicles Act, a member of the Board would be disqualified to be or continue as a member of the State Transport Authority or the Road Transport Authority.

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Remembrancer of Legal Affai

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U.R. to H.D. No. 12816 dated 7th September 1950.

Office of the R.L.A.

Motor Vehicles Act, 1939, Chapter II; Whether a condition about literacy can be imposed in respect of applicants for driving licences.

One of the conditions for the grant or renewal of authorizations to drive taxis as specified in the Press Note issued by the State Transport authority at page 19 ante is that the person applying for a licence shoudd have passed the 5th Standard varnacular examination. The question raised for the consideration of the R.L.A . is whether it is legally feasible to impose such a condition.

2. The provisions regarding licensing of drivers of motor vehicles are contained in Chapter II of the Motor Vehicles act, 1939. Section 4 prescribes the qualification of age limit. Sub-section (1) of section 7 requires an application to be made for the issue of a licence. Under sub-section (2) of that section every such application shall be in Form A as set forth in the First Schedule to the Act and shall be signed by or bear the thumb impression of the applicant in two places. Since under this provision the application for a licence can be made under kak the thumb impression of the applicant, it seems the Act did not contemplate the exclusion of illiterate persons (who could not sign their names) from their ability to get driving licences. A person who has passed the 5th Standard vernacular examination zhe can surely sign his name. It seems, therefore, that it will be going beyond the provisions of the Act as it stands at present to prescribe a literacy condition as proposed.

3. The State Transport Officer in the last para of his u.r. at pages 26-26 ante has in this connection invited attention to rule 4(7) of the Bombay Motor Vehicles Rules, 1940, which provided that the licensing authority shall sign or countersign the licence if it is satisfied that the applicant is in all respects fit to be authorised to drive a public service vehicle. The satisfaction of the licensing authority can however be only in respect of the qualification and disqualifications laid down in the Act. A qualification about literacy does not seem to be contemplated by

the motor Vehicles Act.

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U.R. to H.D. No. 707 - Confl. dated the 19th September 1950.

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In such cases the damage can be assessed and the owners of the motor cars can be called upon to pay, and to the event of their default, suits can be filed against them. That is the only remedy available at present, However, it is necessary to have a speedier and more effective remedy. In England any person who causes any injury or damage to be done to a highway is required for each such offence to forfeit and pay any sum not exceeding forty shillings over and above the damage occasioned thereby, and p ovision is further made for levy of forfeiture etc. on conviction by distress and sale etc. On these lines we may amend the Bombay Highway Act, 1883 (I of 1883) by widening its scope. The highways declared to be notional highways cannot, however, be covered by such legislation, as they have been placed in the exclusive Union List. (Entry No . 23). If the financial responsibility for repairing the damage even in the case of such national highways has been placed upon the State Government, the Government of India may be moved to promote similar legislation with respect to such highways.

P.M.Lad
24-7

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 10474 , dated the 24th July 1950.

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Motor Vehicles Act. 1939. Sec. 43(1)(ii).

Under section 43(1)(ii) of the Motor Vehicles Act, 1939, Government can fix the maximum or minimum fares or freights for stage carriages and public carriers. "Fare" means money paid for a passage ~~xxxxxxx~~. "~~para~~"~~xxxxxx~~ ~~xxxxx~~ ~~xxx~~ ~~xxxxxx~~ either by land or by water (see Wharton's Law Laxicon) "pares" as defined in section 2(6) of the Motor Vehicles Act includes sums payable for a season ticket or inrespect of the hire of a contract carriage. This inclusive definition would not appear to cover fees for booking a seat in advance. Consequently, the charges payable for booking a seat in any public ~~x~~ carrier or stage carriage would not be a fare within the meaning of section 43(1)(ii) of the Motor Vehicles Act and Government cannot fix the maximum or the minimum ~~xx~~ thereof. Since, however, there is nothing in the Motor Vehicles Act prohibiting the levy of charges for booking seats in stage carriages, the charges for the reservation of seats ~~xx~~ need not be seriously objected to. By an executive order Government may fix reasonable charges for such reservation, although it will have no statutory binding force.

P.M.Lad
17-8

Remembrancer of, Legal Affairs.

U.R. to H.D. No. 11730, dated the 18th August 1950.

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The State Transport Officer is of the view that under sec. 9(2) of the Motor Vehicles Act, 1939 the licence holder is entitled to use his licence in the Bombay State so long as he is a resident of the Indian State etc and not when he changed his residence and if he permanently resides in this State he will not be entitled to the concession available under sec. 9(2) and he will have to apply for and obtain a fresh licence in this State. H.D. states that this sec. does not make any distinction between permanent residence and a temporary residence of the licence holder and the licence issued under this sec. would be valid even if the holder comes to stay permanently in this State provided he is not disqualified under sec. 9(4). or under the proviso to sec. 9(2). The R.L.A. is requested to advise whether this view is correct.

2. Sub-section (2) of sec. 9 of the Indian Motor Vehicles Act, 1939 inter alia provides that a licence to drive a motor vehicle issued by a competent authority in any Part B states or in the French or Portuguese settlement bounded by India shall, if the holder is ordinarily resident in the state or settlement in which the licence was issued be valid throughout the Provinces as if it were a licence issued under this Act. This sec. only provides that license issued to a person who is ordinarily resident in Part B state or settlement shall be valid throughout India. Ordinarily resident means actually present (A I R 1921 P.C. 182). If a licence is issued to a person who is not ordinarily a resident in such a State or Settlement it is open to the State Government to treat it as not valid throughout India. The section does not prohibit the State Government from

treating the licence as valid even when the licencee becomes a permanent resident in this or some other State. The intention of the legislature does not appear to be to put such a person who takes up permanent residence in the State to more disadvantagous position than an ordinary resident in the Part B States or Settlements. The view taken by H.D. at pp. 5-6 ante is correct.

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R.L.A. P.M.Lad
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U.R. TO H.D. No. 13029 dated 12-9-50

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Motor Vehicles Rules, 1940, rule 76 Constitution of Appellate Committees.

The Secretary of the State Transport Authority has raised the question whether with a view to avoiding clash of interests in cases in which the Bombay Road Trahsport Corporation is a party to an appeal preferred against the orders of the R.T.A it would be legally feasible for the Chairman of the State Transport authority to appoint a separate Appellate Committee under rule 76 of the Bombay Motor Vehicles Rules, 1940. The present Appellate Committee consists of eight members of whom two gentlemen are also members of the Corporation. The Secretary , Home Department, proposes that the Chairman may lay down that the two members connected with the State Road Transport Corporation should not take part when appeals in which the Corporation has an interest are heard. The R.L.A . is requested to advise in the matter.

2. Rule 76 of the Bombay Motor Vehicles Rules, 1940 provides inter alia that the authority to decide an appeal against the orders of a Regional Transport Authority under clauses (a), (b) (c) (d), (e) and (f) of section 64 of the Act shall be a committee of such number of members of the State Transport Authority not being less than two as may be appointed by the Chairman. What the rule requires is that an appeal shall be heard by a committee of the State Transport Authority, consis ing of no less than two members. The rule does not specifically provide for the appointment of a standing appellate committee and it would seem to be feasible to appoint a different committee for such appeal that comes up to the State Transport Authority. The preser appellate committee constituted by the Chairman of the State Transport Authority consists of 8 members ; and if as proposed by the Secretary, Home Department, two members who are interested in the affairs of the State Transport Authority abstain from taking part it can still

continue to be a valid authority as required by rule 76. The course suggested by the Secretary, Home Department appears to be feasible.

3. In this connection attention is invited to R.L.A.'s opinion No. 12816, dated the 7th September 1950 in which the R.L.A. has expressed the view that a member of the Road Transport Corporation Board would be disqualified to be or to continue as a member of the States Transport Authority. If action as suggested at "A" on pp. 8-9 of the H.D.Office note is taken, the difficulty felt by the State Transport Authority will not survive.

P.M.Lad
21-9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 13468 dated the 22nd September 1950.

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Motor Vehicles Act 1939 s. 42(1) Whether taxi owners must be taxi driver.

The Remembrancer of Legal Affairs is requested to advise whether the view expressed by the State Transport Officer in para 4 of his letter at pages 1-2 ante is correct. or whether it will be necessary to amend the Bombay Motor Vehicles Rules, 1940 to facilitate the enforcement of the scheme for the "reorganisation of the taxi trade".

2. The main question for consideration is whether person who own taxis cannot permit them to be used as such by others in other words, whether taxi owners must themselves be taxi drivers. Sub-section (1) of section 42 of the Moto Vehicles Act, 1939, provides inter alia that no owner of a transport vehicle (which includes inter alia a motor cab) shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit grantee or countersigned by the Regional Transport Authori or the State Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicl is being used. Thus under this provision if a motor vehicl ~~is being used. Thus under this prevision if a motor vehic~~ vehicle is proposed to be used as a motor cab a permit fro the Regional Transport Authority or the Provincial Tran- sport Authority in respect of that vehicle will be necessary. It will be seen however that the opening words of this section refer to the use of the vehicle by the owner himself or by others say paid employees). Attention is also invited to sections 3 and 5 of the Act. Section 3 require inter alia that no person shall drive a public service veh vehicle unless his license specifically so itles him so to do. Section 5 provides that no owner or person in charge of a motor vehicle shall cause or permit any person who d does not satisfy the provisions of section 3 to drive the v vehicle. Thus the responsibility in respect of drivers of motors cabs possessing authorisations to drive public service vehicles is also

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service vehicles is also left on their owners. It appears therefore that the scheme of the Motor Vehicles Act, 1939, contemplates taxis being owned by one and driven as such by another, so long as the above provisions of the Act stand at present, it would not be correct to insist upon all persons holding permits in respect of motor cabs as required by section 42 themselves being that drivers. In order to give effect to this part of the scheme it will be necessary to amend the Motor Vehicles Act, 1939.

3. The next question is whether the proposal made by the State Transport Authority in para. 4 of his letter at pages 1-2 ante would be legally feasible, viz. to refuse to issue permits for use of vehicles as taxis if the applicants are not taxi drivers. The only considerations which weigh before the Regional Transport Authority while granting such permits are those mentioned in section 50 (extent of additional cabs necessary, etc.); and conditions which may be imposed under section 51 and 59. For driving a public service vehicle only a driving licence as in Form D in the First Schedule to the Act is necessary. (see also rule 4 of the Bom. Motor Vehicles Rules). The only circumstances in which the Regional Transport Authority can refuse to issue permits in respect of motor cabs are those specified in rule 50 of the Bombay Motor Vehicles Rules, 1940 (i.e. about the number and under rule 53(3) if the construction of the vehicle is likely to cause discomfort to passengers travelling therein. The consideration now brought forth viz. that the applicant is not himself a taxi driver will not therefore be sufficient to justify refusal of a permit. Moreover such an order of the Regional Transport Authority will be appealable under section 64(a); and the Appellate Committee is bound to give the person affected an opportunity of being heard. It will therefore be necessary to mention in the order of the Regional Transport Authority the reasons for the refusal of the grant of the permit. The above reason would

not ....

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not be considered valid since the Act itself does no. prohibit persons allowing taxis being driven by others. The course suggested by the State Transport Authority does not not therefore appear to be legally feasible unless the Act is suitably amended.

P.M.Lad
24-9

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U.R. to H.D. No. 13806 , dated the 30th September 1950.

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Bombay Motor Vehicles Rules 1940 : Whether appeals made under - are governed by limitation Act, 1908.

Section 4 of the Indian Limitation Act, 1908, provides for the extension of the period of limitation when the last day expires on a holiday; and section 12 provides for the exclusion of the first day in computing the period of limitation. The Indian Limitation Act, 1908, prescribes thelaw of limitation in respect of suits, appeals and applications to Courts; and would not therefore be applicable in the case of appeals under the Motor Vehicles Act, 1939, andthe Bombay Motor Vehicles Rules, 1940. However in view of the general principles embodied in sections 9 and 10 ofthe General Clauses Act, 1897 appeals preferred on the next day ofholiday and after calculating theperiod of 30 days after excluding the day on which an order is made, communicated or received, as the case may be, will be in order and will have to be admitted.

P.M.Lad
9-10
Remembrancer of Legal Affairs.

U.R. tp H.D. No. 14224 , dated the 10th October 1950.

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No. 19725 dt/30-4-

Submitted.

The question for the consideration of the R.L.A. is whether the Govt. of Bombay is bound by the monopoly granted by the Jambughoda Darbar to the Reva Transport Service.

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Seen and returned

Home Department may inform theReva Transport Service that the Bombay Government has refused to recognise the monopoly granted to it by the Jambughoda State.

P.M.Lad
3-11
Remembrancer of Legal Affairs.

U.R. TO H. D. No. 15385 , dated the 3rd November 1950.

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Bombay Motor Vehicles Rules, 1940 Rule, 48-A.

An order passed by the Secretary, Regional Transport Authority in exercise of the delegated powers under rule 48-A of the Bombay Motor Vehicles Rules, 1940 would be deemed to be an order of the Regional Transport Authority itself and as such cannot be interfered with by that Authority. The view expressed by Home Department at page 9 ante is correct. Such order of the Secretary, Regional Transport Authority can however be interfered with either in appeal or in revision. The course suggested by the State Transport Officer is feasible.

P.M.Lad
21-9
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U.E. to H.D. No. 731-Confl. dated the 29th September 195(

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L.D.R.I.No. 17516 dated 22-9-50.

Submitted with reference to the note of the Home Department at p. 7 ante. For thefacts of the case please see the letter dated 19-12-49 of the Western India Automobile Association at page 1 ante. The question referred to the R.L.A. is whether the Western India Automobile Association can be legally empowered as the competent authority to endorse the International Driving Permits of persons arriving in British India so as to makethem valid in British India. for the period oftheir validity.

There is no provision for empowering the W.I.A.A. to endorse the I.D.Ps. ofthepersons visiting India for the period of their validity. A Seen and returned the View taken by the S.T. office iscorrect.

A .L.R. A - A may be the reply.

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Seen and returned.

The view taken by the State Transport Officer is correct.

P.M.Lad.
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U.R. TO H.D. No. 14024 , dated the 5th October , 1950.

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Office of the R.L.A.

Whether Rule 213 of the Motor Vehicles Rules, 1940, is ultra vires.

The R.L.A. is requested to advise whether the view expressed by the Home Department that rule 212 of the Bombay Motor Vehicles Rules, 1940, is ultra vires of the Motor Vehicles Act, 1939, and should therefore be deleted, is correct.

2. Rule 212 of the Bombay Motor Vehicles Rules, 1940, empowers the various officers of the Motor vehicles Department to exercise powers under sections 86(1), 87(1), 88, 89(b), 106(1), 128 and 129(2) of the Motor Vehicles Act, 1939. These provisions of the Act confer different kinds of the power on police officers and therefore the State Transport Officer and the H.D. have presumed that the rule is ultra vires. The rule is relatable to section 133A of the Act, sub-section (3) of which empowers the State Government to make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular to prescribe inter alia the powers (including the powers exercisable by police officers under the Act) to be exercised by them. This section thus empowers Government by making a rule to confer upon the officers of the Motor Vehicles Department all or any of the powers conferred upon police officers. The rule is, therefore, valid.

P.M.Lad
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Remembrancer of Legal Affairs.

U.R. to H.D. No. 15181 , dated the 1st Nov. 1950.

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Office of the R.L.A.

Whether transport monopoly once recovered by District Superintendent of Police, Kundh Should be refunded.

It is true that this Government is not bound to ~~xxxxxx~~ recognise the monopolies granted by the States prior to merger; but when Government refuses to recognise such monopolies, it will have to refund the monopoly fees for the unexpired period. Consequently Shri Deshmukh 's claim for refund is ~~xxx~~ valid.

P.H.Lad
31-10

Rambrancer of Legal Affairs.

U.R. to H.D. No. 15235 , dated the 1st Nov. 1950.

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Legal Department.

Section 44A of the Motor Vehicles Act, 1939, provides th that notwithstanding anything contained in the Act, the Stat Government may, by notification in the Official Gazette, authorise the State Transport Officer of a Regional Transport Officer to exercise and discharge in lieu of any other authori ty prescribed by or under the Act such powers and functions as may from time to time be specified in the notification. Sub-section (1) of section 44 which provides for the constitution ofthe State Transport Authority and the Regional Transport Authorities provides that theformer shall be constituted to exercise anddischarge thepowers and functions specified in sub-section (3) of that section andthe latter to exercise and discharge the powers andfunctions conferred by orunder Chapter IV. Theexpression "in lieu of" ordinarily means "in place of " . They are expressions of substitution ofone thing f foranother of equivalence (vide Iyer's law Lexicon, p. 600; "1905" 1. K.B. 374). The intention underlying section 44A appears to be that when the State Government has authorised the State Transport Officer or a Regional Transport Officer to exercise and discharge the powers and functions of any other authority thenthat authority shouldcease to function. Both the Officer authorised under that section and the authority concerned cannot exercise thesame powers simultaneously. For these reasonsthe proposal made by the Secretary, State Transport Authority, does not appear to be legally feasible.

J.R.Dhurandar.
9-12

Additional Secretary to Government.

U.R. to H.D. No. 17570 , dated the 11th December 1950

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Legal Department.

It would be competent to the State Legislature to amend the Motor Vehicles Act, 1939 in its application to theState of Bombay. The view taken at "A" of the Home Department note on page 14 is correct. As regards thequestion of previous concurrence attention of the Home Department is invited to the Government of India letter No. 5/142/49-Judl. dated 5-5-1950 which was circulated to all Departments of the Secretariat under L.A.No. 6642 dated 16-5-1950.

J.R.Djurandar.

Additional Secretary to Government.

J.H. to H.D. No. 17621, dated 12th December 1950.

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13/7